

REMARKS

Claim 3 has been amended. No new matter has been added.

Applicants thank the Examiner for withdrawing the previous rejections under 35 U.S.C. § 101 and § 112. Applicants also thank the Examiner for finding the subject matter of claims 18-25, 27 and 28 allowable.

Claims 3, 8-10, 12-16 and 18-28 are pending.

CLAIM REJECTIONS

Rejection under 35 U.S.C. § 102(b)

The Examiner has maintained the rejection of claims 3 and 8-10 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No 4,599,310 to Matson et al. ("Matson"). See Office Action at p. 2. Claims 8-10 depend from independent claim 3.

In an effort to expedite prosecution and not in acquiescence to the rejection, Applicants have amended claim 3 to recite a pharmaceutical composition that includes isolated 10^4 to 10^{10} killed whole cells of a bacterium selected from the genera *Rhodococcus*, *Gordonia*, *Dietzia*, and *Tsukamurella* and a pharmaceutically acceptable carrier, diluent or excipient, which pharmaceutical composition in use modifies a cellular immune response.

The Examiner contends that "Matson et al do teach a composition comprising a *Rhodococcus* bacterium in glucose medium and in the absence of evidence to the contrary the composition would contain 10^4 to 10^{10} killed whole cells." See Office Action at p. 3. Applicants respectfully traverse this.

Matson describes an antibiotic (sandramycin) produced by fermentation of a *Nocardioides* strain and further describes purifying sandramycin and the uses of this purified antibiotic. See col. 2, lines 58-60, col. 7, line 41 to col. 8, line 64, and col. 10, line 62 to col. 12, line 25. Contrary to the Examiner's contention, Matson does not describe a *Rhodococcus* bacterium and there is no mention of a *Rhodococcus* bacterium in Matson. Accordingly, Matson does not describe a pharmaceutical composition that includes isolated 10^4 to 10^{10} killed whole cells of a bacterium selected from the genera *Rhodococcus*, *Gordonia*, *Dietzia*, and *Tsukamurella* and a pharmaceutically acceptable carrier, diluent or excipient, which pharmaceutical composition in use modifies a cellular immune response.

Accordingly, independent claim 3 is not anticipated by Matson. Claims 8-10 depend from claim 3 and are also not anticipated by Matson for at least the reasons described above. Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 12-16 and 26 under 35 U.S.C. § 112, second paragraph, as being indefinite, "for failing to particularly point out and distinctly claim the subject matter which application regards as the invention." See Office Action at p. 3. The Examiner additionally states that "[t]he claims are dependent from rejected claims." Id. Claims 12-16 and 26 depend from independent claim 3.

In an effort to expedite prosecution and not in acquiescence to the previous rejection, Applicants have amended claim 3 and believe that the subject matter of claim 3 is allowable. Since claims 12-16 and 26 depend from independent claim 3, Applicants believe those claims should be found allowable for at least the reasons described above as well.

Applicants respectfully request reconsideration and withdrawal of this rejection.

CONCLUSION

Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance. Should any further fees be required by the present Amendment, the Commissioner is hereby authorized to charge Deposit Account **19-4293**.

Respectfully submitted,

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